

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE WONDERFUL COMPANY LLC
and CAL PURE PRODUCE INC.,

Plaintiffs,

v.

NUT CRAVINGS INC.
and DOES 1 through 10,

Defendants.

Case No. 1:21-cv-03960-MKV

**DEFENDANT NUT CRAVINGS INC.'S NOTICE OF MOTION
AND MOTION TO DECLARE THIS AN EXCEPTIONAL CASE PURSUANT TO
15 U.S.C. § 1117(a) AND AWARD ATTORNEY FEES**

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law, and all of the prior pleadings and proceedings in this Action, Defendant Nut Cravings Inc. ("Defendant"), by and through its undersigned counsel, hereby moves this Court for an Order, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, awarding attorney fees pursuant to 15 U.S.C. § 1117(a).

As set forth in more detail in the accompanying Memorandum of Law, this case should be deemed "exceptional," at least in view of Plaintiffs The Wonderful Company LLC and Cal Pure Produce Inc.'s (collectively, "Plaintiffs") continually shifting positions on the scope of their purported trade dress. Plaintiffs' initial assertions that they owned the exclusive right to the colors black and green on snack food packaging was unreasonable, and Plaintiffs' amended complaints narrowing the alleged trade dress confirmed that there was no possible infringement. Plaintiffs also never attempted to allege that the asserted trade dress is non-functional. Plaintiffs will continue to bring meritless litigation unless deterred by an award of fees.

The amount of attorney fees sought is approximately \$60,000. Pursuant to Rule 54(d) and in the interests of judicial economy, Defendant respectfully requests that this Court first “decide issues of liability for fees before receiving submissions on the value of services.” Fed. R. Civ. P. 54(d)(2)(C). Defendant is prepared to provide supplemental briefing and evidence regarding the amount of fees sought upon request by the Court.

For these reasons, and those set forth in the accompanying Memorandum, Defendant seeks an Order awarding Defendant its attorney fees, including Defendant’s reasonable expenses incurred in bringing the present Motion.

Respectfully submitted,

Dated: October 10, 2023

By: s/ Mark Berkowitz
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